

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

DAVID ALLEN RUSSELL, #1636898 §

VS. § CIVIL ACTION NO. 6:20cv430

RILEY KING, ET AL. §

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff David Allen Russell, a former inmate confined within the Texas Prison system, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On April 7, 2022, Judge Love issued a Report (Docket No. 52), recommending that Defendants' motion for summary judgment limited to exhaustion (Docket No. 43) be granted and that Plaintiff's lawsuit be dismissed, without prejudice, for the failure to exhaust required administrative remedies. A copy of this Report was sent to Plaintiff at his last-known address, with an acknowledgment card. The docket reflects that the Report was returned as "undeliverable," with a "return to sender" stamp/notation (Docket No. 53).

The Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United*

Servs. Auto. Ass'n, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten days to fourteen days).


Here, Plaintiff has not filed objections. The Court therefore reviews the Magistrate Judge's findings for clear error or abuse of discretion and reviews his legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.").

Having reviewed the Magistrate Judge's Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 52) as the findings of this Court. Therefore, it is

ORDERED that Defendants' motion for summary judgment (Docket No. 43) is **GRANTED** and the above-styled lawsuit is **DISMISSED**, without prejudice, for Plaintiff's failure to exhaust required administrative remedies. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **25th** day of **April, 2022**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE